

**BAKER BOTTS LLP**

USDC SDNY		AUSTIN
ONE SHELL PLAZA		BEIJING
DOCUMENT		DALLAS
HOUSTON, TEXAS		GUANG
270024093		HONG KONG
DOC #:		HOUSTON
TEL +1 713.229.1234		NEW YORK
FAX +1 713.229.2831		RIYADH
www.bakerbotts.com		WASHINGTON
DATE FILED: 11/21/07		

November 21, 2007

BY FAX

The Honorable William H. Pauley  
 United States District Judge  
 Daniel Patrick Moynihan United States Courthouse  
 500 Pearl Street  
 Room 2210  
 New York, New York 10007

G. Irvin Terrell  
 TEL +1 713.229.1231  
 FAX +1 713.229.2831  
 irv.terrell@bakerbotts.com

Application granted.  
 SO ORDERED:

WILLIAM H. PAULEY III U.S.D.J.

11/21/07

Re: *ASARCO LLC and Southern Peru Holdings, LLC v. Grupo Mexico, S.A. de C.V.*,  
 Case No. 1:07-CV-3496 (WHP)

Dear Judge Pauley:

To facilitate transfer of the above-referenced matter to the United States District Court for the Southern District of Texas, Plaintiffs ASARCO LLC and Southern Peru Holdings, LLC, and Defendant Grupo Mexico, S.A. de C.V., jointly request that the Court strike from the record all exhibits previously submitted under seal.

On June 27, 2007, Plaintiffs filed a motion to substitute and transfer venue, and Defendant filed a motion to remand or dismiss. *See* Dkt. Nos. 17, 28. On July 10, Plaintiffs filed a response in opposition to Defendant's motion to remand or dismiss. *See* Dkt. No. 33. Along with their response, Plaintiffs submitted under seal certain exhibits containing confidential business information. *See id.* at Ex. 3; Exs. 1-10 and 12-24 to Ex. 3; Ex. 4; Ex. 1, 5-7, 11-14, 16, 18, and 22 to Ex. 4; Exs. 1-6, 8-12, 16, 19-27, and 31 to Ex. 2 to Ex. 4; Ex. 1 to Ex. 6.

On November 16, the Court entered an order granting Plaintiffs' motion to substitute and transfer venue, denying Defendant's motion to remand or dismiss, and directing the Clerk of the Court to transfer this action to the United States District Court for the Southern District of Texas. *See* Dkt. No. 47. The Court did not reach the merits of Defendant's motion to dismiss, leaving the questions of proper service and personal jurisdiction to the Southern District of Texas. *See id.* The Court did not cite, and apparently did not rely upon, any of the exhibits filed under seal. *See id.*

Striking the sealed exhibits from the record is warranted. Although judicial documents are presumptively subject to public inspection, the presumption of access is weak in the present case because the sealed exhibits bear little relationship to the performance of Article III functions. *See United States v. Amodeo*, 71 F.3d 1044, 1047 (2d Cir. 1995) (report that was not requested by the court, but was merely helpful, was on the periphery of the adjudicative process). The Court did not make a final determination of the parties' substantive legal rights. Moreover, the Court apparently did not consider or rely upon any of the sealed exhibits in ruling upon the parties' motions. *Cf. Encyclopedia Brown Prods. Ltd v. Home Box*

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- 2 -

November 21, 2007

*Office*, 26 F. Supp. 606, 611-12 (S.D.N.Y. 1998) (concluding that the presumption of public access was strong because the court considered and relied upon the parties' submissions in reaching its decision).

If the Court agrees to strike the sealed exhibits from the record, Plaintiffs will send a representative to the Court to retrieve any hard copies of the exhibits. Plaintiffs can resubmit the sealed exhibits to the Southern District of Texas once the case has been transferred to that court.

Respectfully submitted,



G. Irvin Terrell, Counsel for Plaintiffs



David S. Cohen, Counsel for Defendants (signed with permission)

cc: Alan B. Rich, Esq., Counsel for former Plaintiffs.

**BAKER BOTTS LLP**2001 ROSS AVENUE  
DALLAS, TEXAS  
75201-2980TEL +1 214.953.6500  
FAX +1 214.953.6503  
www.bakerbotts.comAUSTIN  
BEIJING  
**DALLAS**  
DUBAI  
HONG KONG  
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